IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 29252 of 2005(G)

AGAINST THE ORDER DATED 08/08/2005 IN IA.1021/05 IN OS.311/2002 of MUNSIFF'S COURT, MANJERI

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PETITIONER:

ASSAINAR, AGED 56 YEARS,
S/O.MOIDHEEN, KALATHIL HOUSE, VANGADU DESOM,
VETTIKKATTIRI AMSOM, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.ANAND

RESPONDENTS:

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1. KUNJALI, AGED 50 YEARS,
S/O.MOIDHEEN, THACHINGANADU DESOM,
PERINTHALMANNA TALUK.

2. IYYATHUTTY, AGED 58 YEARS,
D/O.MOIDHEEN, VANGADU DESOM, VETTIKKATTIRI AMSOM,
ERNADU TALUK, MALAPPURAM DISTRICT.

3. AYISHAKUTTY, AGED 45 YEARS,
D/O.MOIDHEEN, NELLIKUNNU DESOM,
PAYYANAD AMSOM, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.V.S.ROBIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.29252/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT DT.21.10.02.

EXT.P2 – TRUE COPY OF ORDER IN IA.1021/05 IN O.S.311/02 DATED 8.8.05 OF MUNSIFF'S COURT, MANJERI.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.29252 OF 2005

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DATED THIS THE 8TH JUNE, 2007

J U D G M E N T

Ext.P2 order on an application filed by the defendants to remit the commissioner's report and plan is under challenge in this proceeding under Article 227 of the Constitution of India by the 1st defendant. The learned Munsiff noticed in the impugned order that the suit is one for fixation of boundaries, that the defendants are not attacking the commissioner's report and plan and that their demand is only for locating the properties covered by purchase certificate No.1200/76. The complaint of the defendants was that the property has not been measured by the commissioner on the basis of the above purchase certificate. Finding that the purchase certificate was not produced by the defendants in court and that even their counsel was not having a copy of the same in the case bundle, the learned Munsiff took the view that it is not possible to direct the advocate commissioner to identify the property covered by the purchase certificate, a document which is neither in court nor with the party.

2. Heard Sri.K.Anand, counsel for the petitioner and Sri.Rajesh R.Kormath, counsel for the respondents.

3. Mr.Anand would submit that the observation of the learned

Munsiff that the defendants were not attacking the commissioner's report and plan is wrong. Detailed objections had been filed to the advocate commissioner's report. So also, the learned Munsiff's observation that the purchase certificate was not before the court is wrong. The purchase certificate had been produced by the plaintiffs themselves as a document along with the plaint.

4. Mr.Rajesh, counsel for the respondents fairly submitted that it may not be correct to say that the defendants did not attack the commissioner's report and plan. He conceded that the purchase certificate had been produced along with the plaint. But according to counsel, the advocate commissioner had measured the property on the basis of the purchase certificate also and it has been reported by the advocate commissioner that the defendants did not co-operate with him while measurement was being conducted.

5. It may be true that the advocate commissioner had measured the property on the basis of the purchase certificate also. But the impugned order proceeds on the premise that the commission report was not attacked and that the document is not produced in court. Both these premises are wrong. Therefore, I set aside Ext.P2 and direct the learned Munsiff to take a fresh decision on I.A.No.1021 of

2005, considering the stand taken by the respondents-plaintiffs also. The Munsiff will take fresh decision early and at any rate within three weeks of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl